

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 01.08.2018

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THE HON-BLE MR. JUSTICE K.RAVICHANDRABAABU

AND

THE HON-BLE MRS.JUSTICE T.KRISHNAVALLI

+CMA(MD) Nos.806 of 2017

and 807 of 2017

and

CMP(MD)Nos.8713 and 8714 of 2017

CMA(MD)No.806 of 2017:~

#The Branch Manager,

The Oriental Insurance Company Limited,

Gopal Rav Library Buildings 1st Floor,

Town Hall Road, Kumbakonam Taluk,

Thanjavur District. : Appellant/2nd Respondent

Vs.

\$1.J.Mariammal

2.Thangaiah

3.Minor Abinaya

4.Minor Tamilalazhan

5.Minor J.Atchaya

(Minors 3rd to 5th respondents rep.

By their guardian and mother of the

1st Respondent J.Mariammal)

6.Kandhaiah :1~6 respondents/1~6 Petitioners

7.Cauvery :7th Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the award made in M.C.O.P.No.760 of 2010 dated 28.02.2017 on the file of the Motor Accidents Claims Tribunal cum Special Court for E.C & NDPS Act Cases, (Additional District Judge/Presiding Officer), Pudukottai.

!For Appellant : Mr.K.Bhaskaran

^For R1 to R6 : Mr.A.Thiyagarajan

For 7th Respondent : Ex~parte

2.CMA(MD)No.807 of 2017:~

The Branch Manager

The Oriental Insurance Company Limited,

Gopal Rav Library Buildings Ist Floor,
Town Hall Road, Kumbakonam Taluk,
Thanjavur District. : Appellant/3rd Respondent

Vs.

1.Malarkodi
2.Minor Thangaiah
3.Minor Abinaya
4.Minor Tamilalazhan
(Respondents 2 to 4, who are minors, are
represented by their guardian and mother
first respondent herein) :Respondents 1 to 4/
Petitioners 1 to 4

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor
Vehicle Act, against the judgment and decree made in M.C.O.P.No.618 of 2012,
dated 28.02.2017, on the file of the Motor Accident Claims Tribunal~cum~
Special Court for E.C.& NDPS Act cases(Additional District Judge/Presiding
Officer), Pudukkottai.

!For Appellant : Mr.K.Bhaskaran

^For R1 to R4 : Mr.A.Thiyagarajan

:JUDGEMENT

(Judgement of the Court was delivered by T.KRISHNAVALLI, J)

Challenge made in these appeals is to the award passed by the Motor
Accidents Claims Tribunal~cum~Special Court for EC & NDPS Act cases
(Additional District Judge/Presiding Officer), Pudukkottai, in MCOP Nos.760
of 2010 and 618 of 2012, dated 28.02.2017.

2.Since, both the appeals arise out of the common judgment and the
issues involved in both the appeals are same, the appeals are heard together
and disposed of by a common judgment.

3.The short facts of the case is that on 10.06.2010 at about 8.00 pm,
the deceased Jeyaraj, after purchasing vegetables returned from Vadakadu to
Kilathur by his motor cycle bearing registration No.TN~49~P~2082. When he was
nearing Shangam Theatre, a lorry bearing registration No.TN~57~3160 came in a
rash and negligent manner and hit against the two wheeler. In that process,
the deceased Jeyaraj sustained grievous injuries and immediately, he was
admitted in Alangudi Government Hospital and thereafter, he was referred to
Thanjavur Medical College Hospital and subsequently, after taking treatment
in various private hospitals, he died on 01.08.2010.

4.The legal heirs of the deceased filed claim petitions in MCOP Nos.760

of 2010 and 618 of 2012 claiming compensation of Rs.15,00,000/~ and Rs.20,00,000/~ respectively alleging that the deceased Jeyaraj was working as a Lorry driver, thereby he was earning Rs.10,000/~ per month. A case in Crime No.107 of 2010 was registered by the Vadakadu Police Station under sections 279 and 337 IPC against the driver of the offending vehicle.

5.The appellant Insurance Company resisted the claim contending that the accident had taken place due to the negligence of the deceased, so they are not liable to pay any compensation and the claim was on the higher side.

6.Before the tribunal on the side of the claimants, four witnesses were examined and 7 documents were marked. On the side of the Insurance Company, no witness was examined and one document was marked.

7.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.16,20,000/~ to the claimants in MCOP No.760 of 2010 and Rs.2,00,000/~ to the first claimant in MCOP No.618 of 2012 respectively. Challenging the common award, the present appeals have been filed by the Insurance Company.

8.Heard the learned counsel for the appellant Insurance Company and the learned counsel for the respondents/claimants and perused the materials available on record.

9.The manner of the accident and the finding on negligence are not in dispute and the appeals are confined only to quantum of compensation awarded by the Tribunal.

10.It is contended by the learned counsel for the Insurance Company that the monthly income fixed by the tribunal at Rs.9,000/~ is on the higher side, so the quantum is to be reduced. On the other hand, the learned counsel for the claimants submitted that the award is reasonable, which does not warrant any interference of this court.

11.It is not in dispute that the first claimant in MCOP No.618 of 2012 is the legally wedded wife of the deceased Jeyaraj and the first claimant in MCOP No.760 of 2010 is the second wife of the deceased Jeyaraj and the claimants 2 to 5 in MCOP No.760 of 2010 are the children born to the deceased Jeyaraj and the 6th claimant in MCOP No.760 of 2010 is the father of the deceased.

12.PW2 is the employer of the deceased Jeyaraj and he deposed that the deceased Jeyaraj was working as Lorry driver under him and he was earning Rs.10,000/~ per month, but no documentary evidence was produced in support the claim. Hence, the tribunal has fixed the monthly income of the deceased at Rs.9,000/~.

13.A perusal of the averments in the claim petitions would reveal that it has been averred that the deceased Jeyaraj was a Lorry Driver, but no documentary evidences have been produced in support of the claim. In the light of the above facts, it would be appropriate to fix the income of the deceased at Rs.9,000/~ as fixed by the tribunal and by adding 25% towards

future prospects, the income is calculated at Rs.11,250/~ per month. Since the number of dependent family members exceeds six, 1/5th has to be deducted towards his personal expenses. By doing so, the loss of contribution would be Rs.9,000/~ per month.

14.From perusal of Ex.P2 postmortem certificate, it shows that the deceased was 42 year old. No contra evidence was let in in this regard. So, as per the decision in Sarla Verma, by applying multiplier -14-, the loss of dependency is arrived at Rs. Rs.15,12,000/~ (Rs.9,000/~ x 12 x 14). The tribunal has awarded Rs.5,60,000/~ under the head of conventional damages. However, as per the decision in Pranay Sethi, this Court modifies the awards under the heads of conventional damages. In this manner, the compensation that is payable to the claimants is worked out as under:~

Head

Award of the tribunal

Award of this court

Loss of dependency

Rs.12,60,000/~

Rs.15,12,000/~

Consortium

Rs. 1,00,000/~

Rs. 40,000/~

Love and Affection

Rs. 4,00,000/~

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Funeral Expenses

Rs. 25,000/~

Rs. 15,000/~

Loss of estate

Rs. 25,000/~

Rs. 15,000/~

Ambulance

Rs. 10,000/~

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Total

Rs.18,20,000/~

Rs.15,82,000/~

15.In so far as MCOP No.618 of 2012 is concerned, a perusal of the judgement of the tribunal would reveal that the tribunal has awarded compensation of Rs.2,00,000/~ to the first claimant Malarkodi alone, since the claimants 2 to 4 have been awarded compensation in MCOP No.760 of 2010 before the same Tribunal. Hence, this court is of the considered view that the award of Rs.2,00,000/~ towards compensation to the first claimant Malarkodi seems to be just, fair and reasonable, which do not warrant any interference by this Court.

16. In the result, CMA(MD)No.806 of 2017 is partly allowed, modifying the award amount to Rs.13,82,000/~ as against Rs.16,20,000/~. In view of the above finding, CMA(MD)No.807 of 2017 is dismissed.

17. It is represented by the Insurance Company that the entire award amount with accrued interest and costs had already been deposited before the tribunal. Hence, out of the compensation amount of Rs.13,82,000/~ in respect of MCOP No.760 of 2010, the respondents 1 to 5/claimants 1 to 5 are each entitled to Rs.2,50,000/~ and the 6th respondent/6th claimant being the father of the deceased is entitled to Rs.1,32,000/~ and the major claimants are permitted to withdraw their share together with interest and costs. In so far the 1st respondent/1st claimant in MCOP No.618 of 2012 is concerned, she is entitled to withdraw Rs.2,00,000/~ as per the award of the tribunal together with accrued interest and costs. It is represented that the respondents 3 and 4/Claimants 3 and 4 in MCOP No.760 of 2010 have attained majority. Hence, the respondents 3 and 4/claimants 3 and 4 are permitted to withdraw their share as indicated above together with accrued interest and costs. The share of the 5th respondent/5th claimant shall be deposited in any one of the nationalized bank in a fixed deposit scheme till she attained majority. The 1st respondent/1st claimant Mariammal is permitted to withdraw the interest accrued on the fixed deposit once in three months for the welfare of the minor. The excess amount, if any, shall be refunded to the Insurance Company. No costs. Consequently, connected Miscellaneous Petitions are closed.